



Council Agenda Report

To: Mayor Pierson and the Honorable Members of the City Council

Prepared by: Patrick Donegan, Deputy City Attorney

Date prepared: October 14, 2021 Meeting date: November 2, 2021

Subject: Amendment No. 2 to Contract for Special Legal Services with Leech, Tishman, Fuscado & Lampl, Inc. to Address Aviation Noise Generated from Changes Los Angeles International Airport Flight Paths

RECOMMENDED ACTION: Authorize the Mayor to execute a second amendment to the Agreement for Legal Services with Leech, Tishman, Fuscado & Lampl, Inc. and Steven Taber of the firm ("Taber").

FISCAL IMPACT: This amendment adds up to \$13,000 to an existing contract. Services will be provided at an hourly rate per the scope of work, not to exceed \$78,000 without further authorization from the City. The existing contract, as amended is for a not-to-exceed amount of \$65,000, the additional \$13,000 would bring the total not to exceed amount to \$78,000. There is sufficient funding for this amendment in the Adopted Budget for Fiscal Year 2020-2021.

DISCUSSION: On December 4, 2018, the City Council entered into an agreement for special legal services with Mr. Taber's firm in order to address an increase in aviation noise experienced by City residents due to the implementation of new flight paths at Los Angeles International Airport (LAX) as part of the Federal Aviation Administration's (FAA) implementation of its "next generation" (NextGen) program. Challenging these flight paths and pursuing options to reduce the noise generated requires specialized knowledge and experience.

Attorney Steven Taber has spent the last three plus years working to gain relief from the increased aviation noise. This has included investigating flight routes over Malibu and the impacts these routes have, filing Freedom of Information Act requests with the FAA for documents related to these issues, analyzing the environmental review undertaken by the FAA, monitoring and providing analysis on efforts by other jurisdictions challenging the FAA's implementation of the NextGen program at LAX, and researching and drafting a petition for rulemaking request to the FAA. Mr. Taber encountered significant resistance from the FAA to providing documents in a timely fashion.

Recently the City of Los Angeles was successful in its litigation with the FAA in which it alleged that the environmental review was improper for some of the routes the City is concerned about. As a result, the draft petition for rulemaking needs to be updated. The purpose of the petition for rulemaking is to request that the FAA amend or repeal certain flight procedures that impact the City and will be based on the data that has been acquired from the FAA via the Freedom of Information Act requests made under the current Agreement, as well as data obtained independently through a noise monitoring program. This amendment will authorize, and provide funds for, the updating and filing of the Petition, as well as following-up and monitoring the FAA's response to push forward the City's request and seek relief from the noise impacts suffered in the City.

ATTACHMENTS:

1. Amendment No. 2
2. Agreement with Leech, Tishman, Fuscado & Lampl, Inc. and Amendment No. 1

AMENDMENT NO. 2

This is an amendment to the Agreement for Legal Services between the CITY OF MALIBU, a Municipal Corporation, (City) and Leech, Tishman, Fuscaldo & Lampl, Inc. (Firm) dated December 4, 2018 (the Agreement). This Amendment is made and entered into by the parties this ___ day of October 2021.

RECITALS

A. The City contracted with the Firm to provide special legal services pursuant to the terms of the Agreement.

B. On December 9, 2020 The Parties amended the Agreement to increase the total compensation by \$15,000 (total not to exceed \$65,000) in order for the Firm to complete the Petition for Rulemaking.

C. The Parties now desire to amend the Agreement a second time to increase the total compensation by \$13,000 (total not to exceed \$78,000) to amend the Petition based on the recent decision in the City of LA v FAA matter and to monitor and follow up with the FAA regarding their processing of the Petition.

NOW, THEREFORE, in consideration of the mutual covenants hereinafter contained and in the Agreement amended hereby, the parties agree as follows:

1. Section 3 is amended to read as follows:

3. Compensation and Billing Procedures.

3.1 The City shall pay the Firm for its professional services rendered as specified by the Scope of Work at the rate of \$475/hour for services performed by Steven M. Taber and \$250/hour for services performed by Lisa Claxton or other attorneys of similar experience and skill, not to exceed \$78,000. No additional compensation shall be paid for any other expenses incurred, unless first approved by the City Manager, or designee.

3.2 Notwithstanding any other provision of this Agreement, Firm shall fully complete the work as described in Exhibit A to this 2nd Amendment as a result of the increase in compensation.

3.3 The Firm will not bill the City for any expenses, including but not limited to copying, telephone, mileage, facsimile, word processing or electronic research. The rates charged includes all fees and costs associated with this engagement.

3.4 The Firm shall submit to the City, by no later than the 10th day of each month, its bill for services itemizing the fees and costs incurred during the previous month. The City shall pay the Firm all uncontested amounts set forth in the Firm's bill within 30 days after it

is received. In the event that the City contests any amounts set forth in the Firm's bill, the City shall notify the Firm within 30 days from its receipt of the bill.

2. The provisions of the Agreement not affected by this Amendment remain in full force and effect. This Amendment No. 2, together with the provisions of the Agreement and Amendment No. 1 as amended from time to time, that are unaffected by this Amendment No. 2, constitute the entire agreement between the parties.

IN WITNESS WHEREOF the parties have executed this Agreement the ____ day of September, 2021.

CITY OF MALIBU

By _____
Paul Grisanti, Mayor

ATTEST:

Kelsey Pettijohn, City Clerk
(Seal)

LEECH, TISHMAN, FUSCALDO & LAMPL, INC.

By _____
Steven Taber

City of Malibu Petition for Rulemaking and Follow-Up on City of LA Case

Proposed Budget for Next Six Months

Case	Support and Issues Raised by Our Petition for Rulemaking and Follow Up with the City of L.A. v. FAA case				
Location	Los Angeles County, California				
Potential legal actions to be taken	Petition for Rulemaking				
Client Contact	Trevor Rusin				
Rate	\$475/hour for Partner; \$250/hour for Associate				
Item	Task	Hours	High	Low	Cost
<i>Finishing and Monitoring Petition for Rulemaking (Next 6 months)</i>					
<i>Finishing Petition for Rulemaking</i>	Final revisions Petition for Rulemaking	4.0	\$1,900.00	\$1,400.00	
	Assembling Appendix to Petition for Rulemaking	4.0	\$1,900.00	\$1,400.00	
	Filing Petition for Rulemaking				\$450.00
<i>Monitoring Petition for Rulemaking</i>	Following up with FAA and DOT officials regarding progress on deciding whether to move forward with the Petition. This will occur approximately once a month for 6 months. The amount listed is the total for 6 months.	6.0	\$2,850.00	\$2,100.00	
TOTAL		14.0	\$6,650.00	\$4,900.00	\$450.00
<i>Monitoring Fallout of City of L.A.'s Win over FAA (Next 6 Months)</i>					
<i>Monitoring of Court actions</i>	Issuance of Mandate in City of LA v FAA case	0.5	\$237.50	\$175.00	
<i>Monitoring FAA's Action with Respect to Environmental Review per Court Mandate</i>	Following up with FAA and DOT officials regarding progress on environmental review per court mandate. This will occur approximately once a month for 6 months.	6.0	\$2,850.00	\$2,100.00	
<i>Consultation regarding environmental impact on Malibu</i>	If Malibu desires to participate in the environmental review mandated by the Court, it will need to notify the FAA.				

City of Malibu Petition for Rulemaking and Follow-Up on City of LA Case
Proposed Budget for Next Six Months

	Drafting letter to FAA requesting consultation (needs to be submitted soon after the Mandate issues from the Court)	3.0	\$1,425.00	\$1,050.00	
	Follow up with FAA regarding request for consultation.	3.0	\$1,425.00	\$1,050.00	
TOTAL		12.5	\$5,937.50	\$4,375.00	\$0.00
<i>Timeline for City of L.A. Mandated Environmental Review</i>					
<i>Remaining Court Action</i>	Mandate Issued.FRAP 41.		August 30, 2021		
<i>FAA Action</i>	FAA Scoping of Environmental Review (2-3 months)		October 31, 2021		
	If FAA decides to use a Categorical Exclusion		December 31, 2021		
	If FAA decides to use an Environmental Assessment				
	Selecting consultant		December 31, 2021		
	Consultation for various governmental agencies		March 31, 2022		
	Draft Environmental Assessment (at the earliest)		October 31, 2022		
	Draft Environmental Assessment (at the latest)		October 31, 2023		
<i>Timeline for Petition for Rulemaking</i>					
<i>Drafting and filing Petition for Rulemaking</i>	Drafting, revising and filing Petition for Rulemaking		October 31, 2021		
	Deadline for FAA's consideration of Petition for Rulemaking		April 30, 2022		
<i>City of Malibu to decide whether to file Petition for Review of FAA's failure to consider the Petition for Rulemaking (will require new budget)</i>					
<i>Petition for Review Challenging FAA's denial of Petition for Rulemaking</i>	Drafting and filing Petition for Review challenging FAA's denial of Petition for Rulemaking		May 30, 2022		
<i>Required court documents</i>	By court order, usually about one month after the filing of the case		June 30, 2022		
<i>FAA to file Administrative Record</i>	By court order, usually 14 days after the required court documents are filed.		July 14, 2022		
<i>Petitioners to file opening brief</i>	By court order, if no dispositive motions are filed then about 60 days after the Administrative Record is filed		September 12, 2022		

City of Malibu Petition for Rulemaking and Follow-Up on City of LA Case
Proposed Budget for Next Six Months

<i>Respondent (FAA) to file response brief</i>	By court order, usually 30 days after the opening brief is filed. FAA usually asks for at least one extension of time.		October 12, 2022		
<i>Petitioner to file Reply brief</i>	By court order, usually 14 days after the response brief is filed.		October 26, 2022		
<i>Oral Argument</i>	By court order, usually anywhere from 6 - 8 months after the final briefs are filed		June 26, 2023		
<i>Decision</i>	At the Court's discretion, usually 6 - 8 months after oral argument.		December 26, 2023		

**AGREEMENT FOR LEGAL SERVICES
FOR THE CITY OF MALIBU**

This Agreement is made and entered into by and between the law firm of Leech, Tishman, Fuscaldo & Lampl, Inc. (hereinafter "the Firm") and the City of Malibu (hereinafter "the City"). This agreement is made and entered into as of December 4, 2018.

R E C I T A L S:

- A. The City desires to retain the Firm to provide special legal services.
- B. The attorneys of the Firm are duly licensed under the laws of the State of California and are fully qualified to provide the services contemplated by this Agreement.

NOW, THEREFORE, the parties hereto agree as follows:

1. Scope of Services.

The Firm shall perform special legal services and shall use its best efforts to provide those services in a competent and professional manner. The Firm agrees to provide the services and perform the tasks set forth in the Scope of Work, attached to and made part of this Agreement, except that, to the extent that any provision in the Scope of Work conflicts with this Agreement, the provisions of this Agreement will govern. The Scope of Work may be amended from time to time by way of a written directive from the City; provided, however, that any such amendments by the City must not require the Firm to perform (1) any services outside the scope of the Firm's expertise or (2) any services for which the reasonable value of such new or additional services would exceed the fees payable under the Scope of Work. Firm shall advise the City if any services are outside the scope of the Firm's expertise.

2. Designation of Responsible Attorney.

Steven Taber is designated as the Firm's representative and lead attorney for the Firm in connection with the services. The parties understand and agree that the Firm may, from time to time, utilize other attorneys within the Firm to assist Mr. Taber in the performance of this Agreement.

3. Compensation and Billing Procedures.

3.1 The City shall pay the Firm for its professional services rendered as specified by the Scope of Work at the rate of \$450/hour for services performed by Steven M. Taber and \$250/hour for services performed by Lisa Claxton or other attorneys of similar experience and skill, not to exceed \$50,000. No additional

compensation shall be paid for any other expenses incurred, unless first approved by the City Manager, or her designee.

3.2 The Firm will not bill the City for any expenses, including but not limited to copying, telephone, mileage, facsimile, word processing or electronic research. The rates charged includes all fees and costs associated with this engagement.

3.3 The Firm shall submit to the City, by no later than the 10th day of each month, its bill for services itemizing the fees and costs incurred during the previous month. The City shall pay the Firm all uncontested amounts set forth in the Firm's bill within 30 days after it is received. In the event that the City contests any amounts set forth in the Firm's bill, the City shall notify the Firm within 30 days from its receipt of the bill.

4. Term of the Agreement.

This Agreement shall commence as of November 5, 2018 and shall be and remain in full force and effect until the parties agree that the work required is complete or the Agreement is terminated in accordance with the provisions of Section 6 hereof.

5. Resolution of Fee Disputes.

The City is entitled to require that any fee dispute be resolved by binding arbitration in Los Angeles pursuant to the arbitration rules of the Los Angeles County Bar Association for legal fee disputes. In the event that City chooses not to utilize the Los Angeles County Bar Association's arbitration procedures, City agrees that all disputes regarding the professional services rendered or fees charged by the Firm shall be submitted to binding arbitration in Los Angeles to be conducted by the American Arbitration Association in accordance with its commercial arbitration rules.

6. Termination of the Agreement.

The City may terminate this Agreement, with or without cause, upon written notice to the Firm. The Firm may terminate, with or without cause, on thirty (30) days written notice to the City. In either event, the City agrees to secure new counsel as quickly as possible and to cooperate fully in the substitution of the new counsel as counsel of record. The Firm agrees to cooperate fully in any such transition, including the transfer of files. Notwithstanding the termination of the Firm's services, City will remain obligated to pay to the Firm all fees and costs incurred prior to termination.

7. Conflict of Interest.

The Firm represents that it presently has no interest and shall not acquire any interest, direct or indirect, in any legal representation which is in conflict with the legal services to be provided the City under this Agreement.

The Firm represents that no City employee or official has a material financial interest in the Firm. During the term of this Agreement and/or as a result of being awarded this contract, the Firm shall not offer, encourage or accept any financial interest in the Firm's business from any City employee or official.

8. Files.

All legal files of the Firm pertaining to the City shall be and remain the property of City. The Firm shall control the physical location of such legal files in a secure and accessible location during the term of this Agreement and be entitled to retain copies of such files, at the Firm's expense, upon termination of this Agreement.

9. Modifications to the Agreement.

Unless otherwise provided for in this Agreement, modifications relating to the nature, extent, or duration of the Firm's professional services to be rendered hereunder shall require the written approval of the parties. Any such written approval shall be deemed to be a supplement to this Agreement and shall specify any changes in the Scope of Services and the agreed-upon billing rate to be charged by the Firm and paid by the City.

10. City Representative.

The City Attorney will be the Firm's primary point of contact for this assignment.

11. Assignment and Delegation.

This Agreement contemplates the personal professional services of Steven Taber and the Firm and it shall not be assigned or delegated without the prior written consent of the City. The Firm shall supervise delegated work, except where precluded from doing so by virtue of a conflict of interest and where otherwise agreed to by the parties hereto.

12. Insurance.

12.1 The Firm shall obtain and maintain in full force and effect a professional liability insurance policy which provides coverage in an amount not less than \$2,000,000 per occurrence and \$2,000,000 aggregate. Said insurance policy shall provide coverage to the City for any damages or losses suffered by the City as a result of any error or omission or neglect by the Firm which arises out of the professional services

required by this Agreement. Such insurance may be subject to a self-insured retention or deductible to be borne entirely by the Firm.

12.2 The Firm shall, if and as prescribed by law, obtain and maintain Workers' Compensation insurance in accordance with Section 3700 of the California Labor Code.

12.3 The Firm agrees to notify City in the event the limits of its insurance should fall below the coverage stated in this paragraph or if the insurance policies noted here are allowed to lapse and substitute insurance is not obtained.

13. Indemnification.

13.1 The Firm agrees to indemnify, hold harmless and defend City and City Council, its officers, employees, agents and volunteers, from any and all liability or financial loss including legal expenses and costs of expert witnesses and consultants resulting from any suits, claims, losses or actions brought by any person or persons, by reasons of injury and arising directly or indirectly from the negligent or wrongful activities and operations of the Firm, including its officers, agents, employees, or subcontractors in the performance of this Agreement.

13.2 The provisions of this Paragraph 13 shall survive the termination of this Agreement.

14. Legal construction.

14.1 This Agreement is made and entered into in the State of California and shall in all respects be interpreted, enforced and governed under the laws of the State of California. Venue for any action related to this Agreement shall lie exclusively in the courts located in Los Angeles, California

14.2 This Agreement shall be construed without regard to the identity of the persons who drafted its various provisions. Each and every provision of this Agreement shall be construed as though each of the parties participated equally in the drafting of same, and any rule of construction that a document is to be construed against the drafting party shall not be applicable to this Agreement.

14.3 The article and section, captions and headings herein have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction.

14.4 Whenever in this Agreement the context may so require, the masculine gender shall be deemed to refer to and include the feminine and neuter, and the singular shall refer to and include the plural.

14.5 In all such situations arising out of this Agreement, the parties shall attempt to avoid and minimize the damages resulting from the conduct of the other party.

14.6 If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

15. Notices.

Any notice required to be given hereunder shall be deemed to have been given by depositing said notice in the United States mail, postage prepaid, and addressed as follows:

TO CITY:

Christi Hogin
City Attorney, City of Malibu
Best Best & Krieger LLP
1230 Rosecrans Avenue, Ste. 110
Manhattan Beach, CA 90266

TO FIRM:

Steven Taber
Leech, Tishman, Fuscaldo & Lampl, Inc.
200 South Los Robles Avenue, Suite 210
Pasadena, CA 91101

16. General Terms and Conditions. (City and Firm initials required at EITHER 16.1 or 16.2)

16.1 Disclosure Required. By their respective initials next to this paragraph, City and Firm hereby acknowledge that Firm is a “consultant” for the purposes of the California Political Reform Act because Firm’s duties would require him or her to make one or more of the governmental decisions set forth in Fair Political Practices Commission Regulation 18700.3 or otherwise serves in a staff capacity for which disclosure would otherwise be required were Firm employed by the City. Firm hereby acknowledges his or her assuming-office, annual, and leaving-office financial reporting obligations under the California Political Reform Act and the City’s Conflict of Interest Code and agrees to comply with those obligations at his or her expense. Prior to Firm commencing services hereunder, the City’s Manager shall prepare and deliver to Firm a memorandum detailing the extent of Firm’s disclosure obligations in accordance with the City’s Conflict of Interest Code.

City Initials _____
Firm Initials _____

16.2 Disclosure not Required. By their initials next to this paragraph, City and Firm hereby acknowledge that Firm is not a “consultant” for the

purpose of the California Political Reform Act because Firm's duties and responsibilities are not within the scope of the definition of consultant in Fair Political Practice Commission Regulation 18700.3 and is otherwise not serving in staff capacity in accordance with the City's Conflict of Interest Code.

City Initials _____
Firm Initials SMT

17. Independent Contractor.

This Agreement is by and between the City and the Firm and is not intended, and shall not be construed, to create the relationship of agency, servant, employee, partnership, joint venture or association, as between the City and the Firm.

17.1 The Firm shall be an independent contractor, and shall have no power to incur any debt or obligation for or on behalf of the City. Neither the City nor any of its officers or employees shall have any control over the conduct of the Firm, or any of the Firm's employees, except as herein set forth, and the Firm expressly warrants not to, at any time or in any manner, represent that it, or any of its agents, servants or employees are in any manner employees of the City, it being distinctly understood that the Firm is and shall at all times remain to the City a wholly independent contractor and the Firm's obligations to the City are solely such as are prescribed by this Agreement.

18. Warranty of Authorized Signatures.

Each of the signatories hereto warrants and represents that he or she is competent and authorized to enter into this Agreement on behalf of the party for whom he or she purports to sign.

19. Counterparts.

This Agreement may be executed in several counterparts, each of which is an original and all of which together constitute one and the same instrument. A signature on a copy of this Agreement received by either party by facsimile or a scanned email is binding upon the other party as an original. Both parties agree that a photocopy of such facsimile or scanned email copy may also be treated by the Parties as an original.

20. Entire Agreement.

This Agreement, together with any written modification pursuant to Paragraph 9 above, shall constitute the full and complete agreement and understanding of the parties and shall be deemed to supersede all other written or oral statements of either party relating to the subject matter hereof.

IN WITNESS WHEREOF, the duly authorized representatives of the


parties have caused this Agreement to be executed as of the dates indicated below.

Dated: December 5, 2018

CITY OF MALIBU

By 
CITY MANAGER

ATTEST:


CITY CLERK
(Seal)

Dated: November 5, 2018

LEECH, TISHMAN, FUXCALDO & LAMPL
INC.

By 
STEVEN FABER

Proposal of Leech Tishman for the City of Malibu Regarding Aviation Noise

After reviewing the City of Malibu's situation, Leech Tishman believes that the following are the City's most fruitful steps to address aviation noise over the City of Malibu. Leech Tishman is prepared to assist the City in carrying out any or all of these steps.

1. It is important to continue any dialog with the FAA. The City's best chance to obtain a result that it wants is to reach an agreement with the FAA regarding changing the procedures without resort to litigation or other legal proceedings. Toward this end, Leech Tishman suggests meeting with the FAA Regional Administrator and other officials to make the City's position known.
2. The City should prepare for litigation by gathering information through the submission of Freedom of Information Act ("FOIA") requests to the FAA related to the changed flight procedures. Such public document requests would focus on seeking information related to the basis of the FAA's refusal to conduct proper environmental review related to the development and implementation of the NextGen procedures.
3. The City should, contemporaneously with the public document requests, prepare a letter to the FAA requesting a Supplemental Environmental Assessment be performed regarding the environmental review of the procedures that impact the City. The intent would be to get the FAA to review and revise the procedure that were developed as part of the Southern California Metroplex to lessen the noise and emission impact.
4. The City should draft a petition for rulemaking requesting the FAA to amend or repeal the procedures that impact the City. Such a petition would include data from the FAA and data obtained by the City through a noise monitoring program. It is possible that after reviewing the petition for rulemaking the FAA may amend or repeal the procedures.

Implicit with both the Supplemental Environmental Assessment and the Petition for Rulemaking is the threat of litigation. If the FAA were to deny the City's request for a Supplemental Environmental Assessment, the City would have 60 days to file a petition for review in the U.S. Court of Appeals challenging that decision. Likewise, if the FAA were to deny the petition for rulemaking or ignore it, that would give rise to a cause of action in the U.S. District Court.

Finally, at the meeting with Mayor Rick Mullen, I mentioned the potential for filing claims against the FAA under the Federal Tort Claims Act. This is not something that has been attempted before and it is not an action that the City could take on its own. This would be something that the citizens of Malibu would pursue on their own.

The City of Malibu Work Plan

First Month

1. Begin gathering information regarding flight routes, and noise and air emissions.
2. Draft and file FOIA request (FAA must respond within 20 business days but does not have to provide the documents within 20 days. Realistically, getting the documents can take from 30 days to 80 days).
3. Draft Request for Supplemental Environmental Assessment ("discretion of FAA").
4. Identify and select consultants/experts for airspace analysis, noise, and air quality.
5. Begin noise and air quality study.

Second Month

1. Receive and review documents from first FOIA request.
2. Receive and review airspace analysis.
3. Begin correspondence with FAA regarding negotiations for a settlement.
4. Draft follow-up FOIA request.

Third Month

1. Receive and review report from noise and air quality consultants.
2. Begin drafting Petition for Rulemaking.
3. Receive response from FAA for initial Request for Supplemental Environmental Assessment.
4. Draft follow-up Request for Supplemental Environmental Assessment based on noise and air quality report ("new information").

Fourth Month

1. Initial meeting with FAA.
2. Receive response from FAA regarding Second Request for Supplemental Environmental Assessment. (60-day deadline to file petition for review)
3. File Petition for Rulemaking.

Note:

1. Time references begin on the date that the City of Malibu engages Leech Tishman.
2. Any noise study should be done in August, since that tends to be the busiest month of the year.
3. These tasks and times are estimates.
4. Except where noted, there are no statutory deadlines for any of these tasks.

Not on the budget or this work plan:

1. Petition for Review in either the Ninth or D.C. Circuit of the U.S. Court of Appeals for FAA's failure to conduct a Supplemental Environmental Assessment.
2. Administrative Procedure Act lawsuit in the Central District Court of California for the FAA's failure to respond to and initiate rulemaking based on the Petition for Rulemaking.

LEECH TISHMAN

LEECH TISHMAN FUSCALDO & LAMPL

Action	Task	Hours
II.	<i>Negotiations with FAA</i>	
<i>Airspace Analysis</i>	Airspace analysis by Airspace Consultant (TBD).	
	Review and legal analysis of airspace analysis.	2.0
	Drafting report with legal analysis.	2.0
<i>Correspondence with Allies</i>	Drafting correspondence to local, state and federal delegations to enlist their support.	2.5
<i>Indirect Negotiation with FAA</i>	Correspondence with FAA regarding negotiations regarding possibility of administrative settlement.	3.0
<i>Direct Negotiation with FAA</i>	Preparation for meeting(s) with FAA.	4.0
	Meeting with FAA regarding administrative solutions to the problem.	4.0
<i>Follow Up with FAA</i>	Drafting Memorandum of Understanding documenting agreement and/or administrative settlement.	2.5
	Revisions to MOU and/or Settlement and further discussion with FAA concerning settlement and revised procedures.	2.5
TOTAL FOR ACTION II		22.5
III.	<i>Request for Supplemental Environmental Assessment</i>	
<i>First Request for Supplemental EIS</i>	Draft and submit strongly worded letter with presentation to the FAA regarding Supplemental EIS (based on FAA's inherent authority).	2.5
<i>Second Request for Supplemental EIS</i>	Draft second request for Supplemental EIS based on "significant new information" discovered during the air quality and noise impacts study.	5.0
TOTAL FOR ACTION III		7.5
IV.	<i>Petition for Rulemaking</i>	
<i>Drafting and Filing Petition for Rulemaking</i>	Research and drafting Petition for Rulemaking.	40.0
<i>Follow-up</i>	Drafting and filing follow-up to Petition.	2.5
TOTAL FOR ACTION IV		42.5

City of Malibu Proposed Budget

Case	Aviation noise and emission issues of overflights of Malibu.
Location	Malibu, California
Potential Actions To Be Taken	(I) FOIA Request (II) Meeting with FAA Regional Administrator (III) Request for Supplemental Environmental Assessment (IV) Petition for Rulemaking
Client Contact	Rick Mullen, Mayor, City of Malibu
Rate	\$450/hour for Steven M. Taber; \$250/hour for Lisa Claxton

Action	Task	Hours
0.	<i>Tasks Relevant to All Actions</i>	
<i>Preliminary Information Gathering</i>	Research regarding flight routes that overfly Malibu.	10.0
	Gathering and reviewing information regarding noise and air emissions impacts of flight routes that overfly Malibu.	10.0
<i>Air Quality and Noise Impacts Study</i>	Assist in the selection of air quality and noise experts. (Note: this budget does not include the cost for the air quality and noise experts).	2.0
	Outline scope of work for air quality and noise experts.	3.0
	Review of noise and air quality studies.	10.0
<i>Aviation Committee Meeting in Malibu</i>	Attendance at monthly meetings in Malibu regarding aviation issues (per month).	2.0
TOTAL FOR ACTION 0		37.0
I.	<i>FOIA Request</i>	
<i>Initial FOIA Request</i>	Drafting FOIA request for documents regarding the flight routes that overfly Malibu.	1.0
	Review of documents received from FAA regarding flight routes.	10.0
<i>Second FOIA Request</i>	Drafting follow-up FOIA requests for documents after reviewing initial set of documents produced.	1.0
	Review of documents received from FAA pursuant to second FOIA request.	10.0
TOTAL FOR ACTION I		22.0

LEECH TISHMAN

LEECH TISHMAN FUSCALDO & LAMPL

Firm Overview

Leech Tishman is committed to providing professional legal service to individuals, businesses, and institutions, offering a practical approach and value clients expect.

For over 20 years, Leech Tishman has delivered commitment, service and value to clients by offering specialized, professional and collaborative legal services. Our experienced lawyers have served as in-house counsel and have worked for leading law firms. We deliver a multidisciplinary approach to provide the expertise our clients require and to offer solutions to our clients' simple and complex legal problems.

Our Approach

From individuals and start-ups to Fortune 500 companies, to government entities and not-for-profit institutions, clients can expect quality, tailored solutions to meet their specific legal needs.

Our Commitment

- » Build dedicated, long-term relationships with clients
- » Understand and appreciate client goals, objectives, and challenges
- » Provide proactive insight, custom solutions, and collaborative resources specific to client needs
- » Offer competent, proficient and tested insight to solve routine and complex legal issues

Our Service

- » Collaborative solutions by providing highly skilled partner-led client teams of experienced practitioners
- » Deliver a practical, professional approach to meet your business needs
- » Strong understanding of local, regional, national, and international business to better serve clients
- » Focus on industry-specific legal practices, with proactive insight on the latest legal trends, laws, and regulations that may affect a client's needs

Our Value

- » Leech Tishman offers big-firm legal knowledge, collaborative legal teams, and a strategic approach while providing timely and personalized responses with cost-effective results

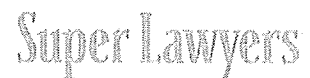
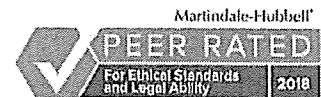
Legal Services

- » Alternative Dispute Resolution
- » Aviation & Aerospace
- » Bankruptcy & Creditors' Rights
- » Construction
- » Corporate
- » Embezzlement & Employee Theft
- » Employee Benefits
- » Employment
- » Energy
- » Environmental
- » Estates & Trusts
- » Family Law
- » Government Relations
- » Immigration
- » Insurance Coverage & Corporate Risk Mitigation
- » Intellectual Property
- » International
- » Litigation
- » Medical Cannabis
- » Real Estate
- » Start-Ups
- » Taxation

Our Professional Accolades

Leech Tishman is recognized by leading publications, including *U.S. News & World Report's Best Lawyers* and *Super Lawyers Magazine*, and also has prominently ranked lawyers in *Martindale-Hubbell*, rated at the highest level of professional excellence by peer review.

Our firm is also a member of *AVRIO Advocati*, an international legal network dedicated to facilitating cross-border legal work for clients.



Our Presence

Leech Tishman takes pride in providing tailored legal services locally, regionally, nationally and internationally. With over 12 offices nationwide, clients can expect our dedicated team of skilled legal counsel committed to the highest level of service and value.

Aviation & Aerospace

Leech Tishman's Aviation & Aerospace Group is skilled in assisting clients with a wide range of aviation and airport development matters.

In Brief

Leech Tishman's attorneys regularly guide clients through the highly-regulated world of aviation and aerospace. With backgrounds that include experience serving as legal counsel for the Federal Aviation Administration (FAA) and as a panel attorney for the Aircraft Owners and Pilots Association (AOPA), members of our group are well-versed in advising clients on all aspects of aviation, aerospace and airport law.

Airports

Drawing on their experience as counsel with the FAA and other governmental agencies, our attorneys can assist clients in all aspects of administrative law, corporate and tax law, transactional law, and environmental and land use law relevant to airports.

Our lawyers have experience with

- » Administrative actions relating to the Federal Aviation Regulations, including Part 13 and 16 actions
- » Bidding and procurement, including construction and professional services
- » Rates and charges
- » Obstruction analysis and aviation easements
- » Exclusive rights at airports
- » Creation and maintenance of minimum standards
- » Compliance with airport security regulations and certifications
- » Assistance with Airport Improvement Program ("AIP") grants and financing
- » Compliance with grant assurances
- » Part 150 Noise program
- » Compliance with international treaties and ICAO standards
- » Environmental and land use compliance
- » Privatization of airports
- » Closure of airports

Defense of FAA Enforcement Actions

Based on their experience serving on the other side of the table, our attorneys understand what is necessary to obtain the best result for our clients when the FAA comes knocking on their door.

We have defended clients in

- » Enforcement actions against pilots
- » Hazardous materials enforcement actions
- » FAA enforcement actions with respect to flight operations, training, quality control, records, drug testing, and maintenance violations of the Federal Aviation Regulations.

Litigation of Critical Aviation Issues and Policies

Our attorneys are on the cutting edge of litigation regarding U.S. aviation issues and policies.

Our attorneys have litigated against the FAA regarding

- » Obstruction determinations
- » Wildlife hazards and Wildlife Management Programs
- » Closing of Contract Air Traffic Control Towers
- » Noise issues surrounding airports and underneath flight paths
- » Air pollution, and greenhouse gas emissions from aircraft

Aircraft Transactions

- » Aircraft purchases and sale
- » Fractional aircraft ownership
- » Aircraft leasing
- » Aircraft ownership structure
- » Shared aircraft ownership
- » Aircraft financing
- » Aircraft charter, management & services agreements
- » Aircraft and aircraft component certification process and airworthiness directives

Drone Law

Our lawyers have experience with

- » Filing for commercial exemptions under Section 333
- » Filing for registration under new Part 107 and Part 101
- » Regulatory issues involving drone use
- » Analyzing issues of state and federal law
- » Privacy concerns

Clients

The clients we serve include

- » Aircraft manufacturers
- » Airlines
- » Airports
- » FBOs
- » Municipalities
- » Pilots
- » Community groups

Environmental

Leech Tishman's Environmental Group is positioned to assist clients in navigating through the complex web of regulatory and litigation aspects of environmental law.

In Brief

Leech Tishman's seasoned attorneys regularly provide guidance with regard to all aspects of federal and state environmental and natural resource regulations. We are focused on helping clients achieve compliance, minimize liability risks, obtain necessary permits and avoid costly litigation.

Compliance/Regulatory

Our attorneys have significant experience with environment, energy and product regulation. In addition to advising clients on permitting and regulatory issues before the Environmental Protection Agency and the Federal Energy Regulatory Commission as well as other federal agencies and departments, we advise businesses and public agencies on a broad variety of environmental, energy and natural resources enforcement issues. We are particularly skilled in defending clients against enforcement actions brought by regulatory agencies.

Leech Tishman regularly advises clients on concerns involving air emissions/air quality, water usage/quality, drinking water systems, soil impacts, waste disposal, pipelines and chemical/pesticide regulation.

Our lawyers have substantial experience with

- » California Environmental Quality Act (CEQA)
- » California's Proposition 65/Safe Drinking Water and Toxic Enforcement Act
- » Comprehensive Environmental Response, Compensation and Liability Act (Superfund/CERCLA)
- » Clean Air Act
- » Clean Water Act
- » Emergency Planning and Community Right-to-Know Act (EPCRA)
- » National Environmental Policy Act (NEPA)
- » National Pollutant Discharge Elimination System (NPDES) permits
- » Resource Conservation and Recovery Act (RCRA)
- » Toxic Substances Control Act (TSCA)

- » Title V Air Permits
- » Interior Department statutes and emergencies raised by spills or accidents, as well as with the release reporting requirements associated with them

Litigation

We provide our clients with knowledgeable and experienced environmental advocacy to protect their rights and guard against unnecessary costs.

Leech Tishman provides litigation services in the following categories

- » Contractual disputes related to environmental issues
- » Government regulatory enforcement
- » Third-party liability and cost-recovery claims
- » Toxic torts and environmental class actions, including asbestos litigation

Transactions

Our attorneys have substantial experience advising clients on appropriate due diligence requirements, as well as in helping clients evaluate and address environmental liabilities that arise during real estate transactions, acquisitions, asset and stock transactions, purchase agreements and supply contracts.

Leech Tishman assists clients in

- » Environmental due diligence and permitting
- » Negotiating, drafting and analyzing contract provisions
- » Negotiations with regulators regarding Brownfield protections, prospective purchaser agreements and other mechanisms
- » Environmental Site Assessments (Phase I/Phase II)
- » All Appropriate Inquiries (AAI)
- » Land use controls
- » Remediation
- » Liability-shifting contractual provisions
- » Environmental indemnification
- » Insurance procurement
- » Compliance loss counseling

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Brownfield Redevelopment

Leech Tishman represents sellers and purchasers of environmentally impaired properties in obtaining regulatory closure or no further action status.

We provide clients services in the following categories

- » Drafting and negotiating prospective purchaser agreements
- » Voluntary cleanup agreements
- » Environmental covenants
- » Site management plans
- » RCRA corrective action permits
- » Institutional controls
- » Deed and land use covenants and restrictions

Energy Industry Services

Leech Tishman provides legal counsel to clients in the energy sector, including conventional and sustainable power generation and distribution, oil and gas exploration, gathering and processing, mining and related businesses.

Our attorneys provide comprehensive services, including environmental services, related to these activities, such as

- » Permitting
- » Transactional and operational support
- » Litigation

Water

Our attorneys regularly work with developers, industrial users, farmers, water providers and other water users to resolve a wide variety of issues related to water rights and water supplies, including

- » Water rights adjudications
- » Sale, lease and transfer of water rights
- » Water rights litigation

Liability Claims Response Strategies

Leech Tishman attorneys regularly advise clients on how to best prepare and protect themselves against unexpected environmental and natural resource-related issues.

We assist our clients in preparing for

- » Superfund releases
- » Crisis management
- » Homeland security obligations
- » Reporting and notification obligations

Legislation and Rulemaking

Leech Tishman believes in the importance of client involvement with the legislative and rulemaking process.

We regularly advise clients on

- » Keeping legislators informed about the importance of legislation
- » Monitoring and influencing pending legislation
- » Assistance with drafting crucial legislation and proposed rules
- » Helping clients interpret, evaluate and benefit from legislation and rulemaking

Project Environmental Impacts

Federal, state and local requirements often require evaluation of the environmental impacts of major projects. Leech Tishman is experienced in developing strategies to initiate and implement such evaluations and use them to influence appropriate government decisions applicable to clients' projects.

We can assist in evaluating

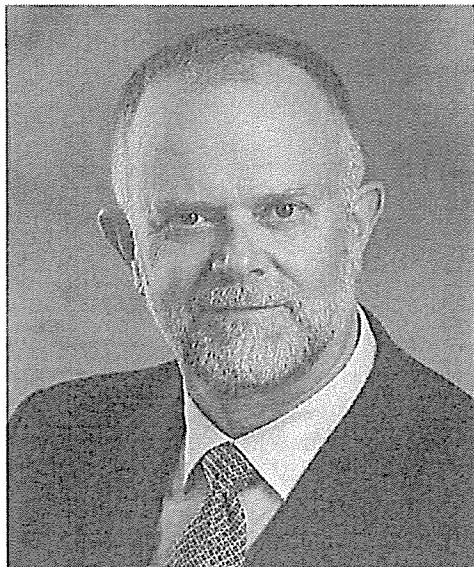
- » National Environmental Policy Act (NEPA) and state environmental quality requirements, such as CEQA
- » Threatened and endangered species and habitats
- » Zoning limitations
- » Permit obligations and conditions
- » Historic and cultural resource preservation
- » Wetlands mitigation
- » Other state regulatory requirements, such as California Coastal Commission permitting

Clients

The clients we serve include

- » Airlines
- » Airport authorities
- » Chemical manufacturers
- » Commercial and industrial printing companies
- » Commercial launderers
- » Construction and engineering companies
- » Educational Institutions
- » Food manufacturers
- » Hazardous waste treatment and disposal companies
- » Heavy equipment manufacturers
- » Hospitals
- » Industrial manufacturers
- » Landfill operations
- » Mining companies
- » National restaurant chains
- » Oil refineries
- » Real estate developers
- » Regulated and independent power generation companies

Steven M. Taber



COUNSEL
STABER@LEECHTISHMAN.COM

626.796.4000
200 SOUTH LOS ROBLES AVENUE, SUITE 210
PASADENA, CA 91101

Steven M. Taber is Counsel at Leech Tishman and a member of the Environmental, Aviation & Aerospace, Corporate, Litigation and Intellectual Property Practice Groups. Steve is based in Leech Tishman's Pasadena office and focuses his practice on environmental law, aviation and airport development law matters, corporate legal issues, complex litigation and intellectual property law. He brings a wealth of knowledge to these seemingly disparate areas of practice through his experience as a government attorney, an in-house counsel and an attorney in private practice.

Steve has experience in both regulatory and litigation aspects of environmental law. Prior to joining Leech Tishman, he served as Owner of Taber Law Group, P.C., where he advised clients in matters arising under the National Environmental Policy Act, the California Environmental Quality Act, the Federal Clean Air Act, the Clean Water Act, the Toxic Substances Control Act, as well as the emerging regulations and statutes concerning climate change. During his time both as an Assistant Attorney General in the Environmental Enforcement Division and as an environmental law partner at a previous law firm, Steve acquired extensive experience in all aspects of environmental law including litigation related to the Comprehensive Environmental Response, Compensation,

and Liability Act (Superfund) (CERCLA), negotiation of Resource Conservation and Recovery Act Consent Decrees, Title V Air Permits, National Pollutant Discharge Elimination System (NPDES) permits, review of environmental provisions of transactions, and the resolution of air excursion issues with state regulatory agencies. Steve has been successful in litigating all manner of environmental claims in the courts and in administrative tribunals.

Steve has a vast amount of experience with aviation law and airport development matters. In his capacity as an attorney for the Federal Aviation Administration (FAA), Steve was involved with many aspects of the requirements of the Federal Aviation Regulations (FARs) and FAA enforcement actions. He has assisted airports, municipalities and community groups with navigating through the highly regulated world of aviation. He regularly counsels clients on numerous statutes and regulations including the Airport Noise and Capacity Act, the Aviation Safety and Noise Abatement Act, the Historic Preservation Act, the Endangered Species Act, and Section 4(f) of the Department of Transportation Act. As a member of the Aircraft Owners and Pilots Association Legal Panel, Steve assists pilots in FAA enforcement actions. He regularly interacts with air carriers concerning various aspects of the Anti-Head Tax Act, the Airline Deregulation Act and Passenger Facility Charges. Steve was also closely involved with the implementation of the Chicago/O'Hare International Airport Modernization Program, and drafting FAA Environmental Orders 1050.1E and 5050.4B.

Steve is well-versed in a wide range of intellectual property legal matters. As an in-house counsel at Ameritrust Mortgage, he was responsible for applying for, maintaining, and enforcing the company's intellectual property. In this position, Steve maintained and renewed trademark registrations, prepared corporate trademark policies, prepared secrecy and confidentiality contracts, developed corporate policy statements regarding trade secrets, and drafted provisions for employment and/or independent contractor agreements regarding maintenance of trade secrets. During the course of his career, Steve has also been involved in patent infringement litigation for items as diverse as bicycle derailleurs to process patents for securitizing futures.

Steve has successfully prosecuted and defended many types of complex litigation. He is a frequent speaker on environmental and airport topics and the author of several articles on environmental law.

Steve speaks French, Dutch and Arabic.

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Academics

J.D., University of Michigan
M.A. in Political Science, University of Michigan Horace C.
Rackham School of Graduate Studies
B.A. with honors in Political Philosophy, Michigan State
University

Admissions

California
Illinois
U.S. Supreme Court
U.S. Tax Court
U.S. Court of Appeals, Second Circuit
U.S. Court of Appeals, Third Circuit
U.S. Court of Appeals, Seventh Circuit
U.S. Court of Appeals, Ninth Circuit
U.S. Court of Appeals, D.C. Circuit
U.S. District Court, Northern District of Illinois
U.S. District Court, Central District of Illinois
U.S. District Court, Central District of California

Experience

Taber Law Group, P.C.
Chevalier, Allen & Lichman
Ameriquest Mortgage Company
Federal Aviation Administration
Freeman, Freeman & Salzman, P.C.
Illinois Attorney General's Office
American Bar Association Center for Professional
Responsibility
Ross & Hardies
Burditt Bowles & Radzius, Chartered
Carlton, Fields, Ward, Emmanuel, Smith and Cutler, P.A.
Peace Corps

Professional Memberships

American Bar Association (Member, Section on Natural
Resources, Environmental and Energy Law)
Chicago Bar Association (Member, Environmental Law
Committee)
Aircraft Owners and Pilots Association (Panel Attorney, Legal
Services Plan)

Community Involvement

Oceanic Defense (Member, Advisory Board)

AMENDMENT NO. 1

This is an amendment to the Agreement for Legal Services between the CITY OF MALIBU, a Municipal Corporation, (City) and Leech, Tishman, Fuscaldo & Lampl, Inc. (Firm) dated December , 2018 (the Agreement). This Amendment is made and entered into by the parties this 9th day of December 2020.

RECITALS

A. The City contracted with the Firm to provide special legal services pursuant to the terms of the Agreement.

B. The Parties now desire to amend the Agreement to increase the total compensation by \$15,000 (total not to exceed \$65,000) in order for the Firm to complete the Petition for Rulemaking.

NOW, THEREFORE, in consideration of the mutual covenants hereinafter contained, and in the Agreement amended hereby, the parties agree as follows:

1. Section 3 is amended to read as follows:

3. Compensation and Billing Procedures.

3.1 The City shall pay the Firm for its professional services rendered as specified by the Scope of Work at the rate of \$450/hour for services performed by Steven M. Taber and \$250/hour for services performed by Esther Choe or other attorneys of similar experience and skill, not to exceed \$65,000. No additional compensation shall be paid for any other expenses incurred, unless first approved by the City Manager, or her designee.

3.2 Notwithstanding any other provision of this Agreement, Firm shall fully complete the Petition for Rulemaking as described in Exhibit A to this 1st Amendment (highlighted section entitled "Finishing Petition for Rulemaking") as a result of the increase in compensation. Payments bringing the total paid over \$62,000 shall not be due until the Petition for Rulemaking is complete.

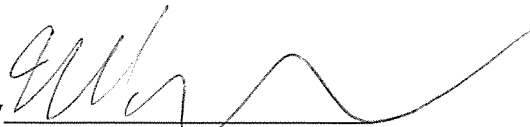
3.3 The Firm will not bill the City for any expenses, including but not limited to copying, telephone, mileage, facsimile, word processing or electronic research. The rates charged includes all fees and costs associated with this engagement.

3.4 The Firm shall submit to the City, by no later than the 10th day of each month, its bill for services itemizing the fees and costs incurred during the previous month. The City shall pay the Firm all uncontested amounts set forth in the Firm's bill within 30 days after it is received. In the event that the City contests any amounts set forth in the Firm's bill, the City shall notify the Firm within 30 days from its receipt of the bill.

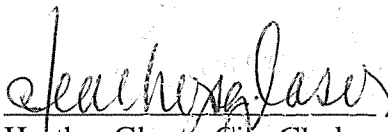
2. The provisions of the Agreement not affected by this Amendment remain in full force and effect. This Amendment No. 1, together with the provisions of the Agreement, as amended from time to time, that are unaffected by this Amendment No. 1, constitute the entire agreement between the parties.

IN WITNESS WHEREOF the parties have executed this Agreement the 9th day of December 2020.

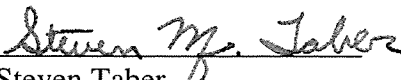
CITY OF MALIBU

By 
Mikke Pierson, Mayor

ATTEST:


Heather Glaser, City Clerk
(seal)

LEECH, TISHMAN, FUSCALDO & LAMPL, INC.

By 
Steven Taber